

Federal Communications Commission

DA 95-1714

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-8

In the Matter of

Amendment of Section 73.202(b), RM-8412
Table of Allotments, RM-8461
FM Broadcast Stations.
(Ola and Russellville, Arkansas)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 2, 1995; Released: August 10, 1995

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 9 FCC Rcd 677 (1994), issued in response to a petition filed on behalf of Yell County Broadcasting ("petitioner") proposing the allotment of FM Channel 267A to Ola, Arkansas, as that community's first local aural transmission service. Petitioner filed supporting comments in response to the *Notice*. Johnson Communications, Inc. ("JCI"), licensee of Station KCJC(FM), Channel 265A, Russellville, Arkansas, filed a counterproposal.² to which petitioner responded. No other comments were received.

2. JCI counterproposed the substitution of Channel 267A for Channel 265A at Russellville, Arkansas, and modification of the license for Station KCJC(FM) accordingly. In support of the counterproposal, JCI states that the requested substitution would enable Station KCJC(FM) to improve its existing service significantly. JCI advises that although Station KCJC(FM) is presently licensed on Channel 265A with an effective radiated power of 6 kilowatts, its operation is governed by the contour protection provisions of Section 73.215 of the Commission's Rules. JCI advises that it is constrained from further service improvements by Stations KBBQ-FM, Fort Smith, Arkansas to the west, and KAWW-FM, Heber Springs, Arkansas, to the east, both of which operate on first adjacent Channel 264C2.³ JCI advises that operation on Channel 267A from its proposed reference coordinates at 35-10-00 and 93-10-00 would enable it to provide a 70 dBu signal over Russellville, Dardenelle and Ola, Arkansas. Further, JCI states that by removing its channel adjacency to Stations KBBQ-FM and KAWW-FM, their service would also be improved by the requested substitution at Russellville.

3. Petitioner, in reply comments, opposes JCI's proposal as it would preclude the allotment of Channel 267A to Ola, Arkansas, an incorporated community. Petitioner argues that in accordance with the Commission's allotment priorities, its first local service proposal (priority three) is preferred over a proposal that would provide a service improvement of an existing station. Petitioner notes that a facility improvement in the allotment context is analyzed pursuant to priority four ("other public interest matters"), to determine the extent to which the proposed change will enable a station to provide service to an expanded population, citing *Greenup, Kentucky and Athens, Ohio*, 2 FCC Rcd 4319 (1989). In further support, petitioner states that although JCI claims that its proposed allotment plan will enable Station KCJC(FM), as well as two other area stations to provide improved services, JCI failed to supply any engineering data to support its assertion. Therefore, petitioner urges the denial of JCI's counterproposal.

4. The proposed allotment of Channel 267A at Ola, Arkansas, and JCI's requested use of that frequency at its specified site at Russellville, are located 17.4 kilometers (11 miles) apart, whereas a minimum distance of 115 kilometers (71 miles) is required in this instance. In an attempt to resolve the technical conflict, the staff performed a frequency spectrum search to determine if alternate channels may be available for allotment to either community. None was found to be available. Therefore, we must consider these proposals on a comparative basis. Pursuant to the Commission's FM allotment priorities, a first local service is usually preferred over a proposal to improve an existing facility.⁴ Furthermore, JCI presented no evidence to demonstrate that its proposed facility would provide a greater public benefit, such as the provision of a first or second full-time aural service, than would result from providing Ola with its first local FM service. See *Belvidere, New Jersey, Scranton and Tannersville, Pennsylvania*, 6 FCC Rcd 1331 (1991). Therefore, we find that the provision of a first local aural transmission service at Ola must be preferred over the requested channel substitution at Russellville.

5. As stated in the *Notice*, Channel 267A can be allotted to Ola, Arkansas, in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter therefor is sited at least 1.8 kilometers (1.1 miles) south of the community at coordinates 35-01-02 and 93-13-34. The site restriction is required to avoid a short spacing to Station KCJC(FM), Channel 265A, Russellville, Arkansas, at coordinates 35-17-37 and 93-10-39.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 25, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include Ola, Arkansas, as follows:

¹ The community of Russellville, Arkansas, has been added to the caption.

² Public Notice of the counterproposal was given on April 13, 1994, Report No. 2005.

³ We note that JCI's licensed site at coordinates 35-17-37 and 93-10-39 is 0.7 kilometers (4 miles) short-spaced to Station

KAWW-FM, Heber Springs, but meets the minimum distance separation requirements to Station KBBQ-FM, Fort Smith, Arkansas.

⁴ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). See also *Benton, Arkansas, et al.*, 3 FCC Rcd 4840 (1988), *recon. denied*, 7 FCC Rcd 2555 (1992).

City
Ola, Arkansas

Channel No.
267A

7. The window period for filing applications for Channel 267A at Ola, Arkansas, will open on **September 25, 1995** and close on **October 26, 1995**.

8. IT IS FURTHER ORDERED. That the counterproposal filed on behalf of Johnson Communications, Inc., requesting the substitution of Channel 267A for Channel 265A at Russellville, Arkansas (RM-8461) IS DENIED.

9. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 267A at Ola, Arkansas, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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